

REVIEWS

THE SOVIET IMPACT ON THE WESTERN WORLD. By Edward Hallett Carr.
New York: The Macmillan Company, 1947. Pp. 113. \$1.75.

It hardly needs argument that the major fact in the world today is the issue between Soviet Russia and the traditional democracies. If a wise and informed position with respect to this issue is to be taken by any person or any nation, not merely the traditional democracies but also Soviet Russia must be understood. Edward Hallett Carr's *The Soviet Impact on the Western World* provides one of the best brief introductions to such an understanding.

Although his emphasis is upon "impact," he makes it evident from the very outset that this impact cannot be understood unless the ideological assumptions from which it proceeds are grasped. Consequently, the book is also important because it is a specific example of the new ideological approach to economic, political, legal and international questions.

To understand Professor Carr's book we must first consider certain factors which have made this new approach necessary. One factor is obvious: namely, the inescapable ideological conflicts of the contemporary world. The issue between the U.S.A. and the U.S.S.R. is but one instance of these conflicts. There is a less exaggerated but nonetheless real conflict between the economic and political ideology of the U.S.A. at the present moment and that of the British Labor government. There would also be a conflict between the present ideology of the U.S.A. and that of the British government were the Labor government to be superseded by a Conservative government. For the younger leaders of the British Conservative party are for a continuation of the present nationalization of British banking and industry.

As this reviewer noted in the chapter on British democracy in *The Meeting of East and West*, a Conservative in Great Britain is fundamentally different from a Conservative in the United States. The American Conservative goes back to the laissez-faire economic theory of Adam Smith, Mill, Jevons and the Austrian School and to the laissez-faire individualistic political theory of John Locke. This type of Conservative passed out of existence in Great Britain with the death of the Whig party at the opening of the nineteenth century. To be sure, it took on a new form with the utilitarian hedonism of Bentham and the attendant British Liberal party. But the British Liberal party has also become practically extinct in contemporary British politics. A British Conservative goes back to Hooker and the Tudors, and they, in turn, rest upon Aristotle, who regarded politics not, as did Locke, a necessary evil, but as part of man's essential nature and hence a positive good.

There is a similar conflict between the more Lockean laissez-faire ideological assumptions of the traditional U.S.A. and the more psychological and emotive values of the Latin-American world. And an even deeper-going and older ideological conflict is coming to the fore in contemporary international

politics at the present moment in the problem confronting Japan, China and India of combining the traditional-Oriental social and cultural institutions with those of the traditional West.

A second consideration leading to this new ideological approach to social and international problems results from the development of the social sciences in the modern West. This development exhibits itself in recent modern theories of jurisprudence. The positivistic, analytic theory of law of Austin has been followed by the more formalistic theory of Kelsen and the neo-Kantians, by the historical theory of Maine, and by the sociological theory of Montesquieu, Ehrlich, Professor Pound and their followers. The legal realism of Professor Llewellyn and his colleagues belongs to this latter group, since it conceives of the law in terms of the actual decisions and doings of judges in a social context. The sociological character of law as power decisions affecting values, as conceived by Professors Lasswell and McDougal, is equally obvious.

This sociological approach, however, as initially formulated was more verbal than scientific. Either it spent more time talking about being scientific than in actually pursuing scientific investigations, or, as in the case of Ehrlich, the scientific studies referred merely to books about societies often so distant in the past that the conclusions reached were difficult to check. Gradually, however, these weaknesses have been removed by two developments: one, the rigorous application of the methods of natural science to social phenomena of a legal nature by Professor Underhill Moore; and, two, the natural history descriptive field studies of different contemporary societies described by Malinowski and many other cultural anthropologists and sociologists.

It was thought for a considerable time that this would provide law and social science generally with a scientifically grounded theory. However, it soon became evident that this was not the case. Completely different societies tended to be conceived in terms of the descriptive or analytic concepts of the particular anthropologist or sociologist who happened to be doing the describing. This provided a different analysis than might have resulted from a description of social or cultural institutions of any given people as conceived by the people themselves. Hence, analysis cast in the semantic and ideological framework of the modern Western anthropologist has failed to detect the diverse legal and normative social prescriptions of the societies investigated.

The limitations of this approach showed themselves in two ways. First, different sociologists and cultural anthropologists, using different descriptive or analytic concepts for describing, classifying and coordinating the same observable data, arrived at different conclusions. Different sociological theories developed from different sociological schools. Second, any given school, since its particular sociological concepts applied to all societies, could throw little light upon the ideological conflicts which prevent diverse societies from cooperating in international enterprises.

Reflection upon this situation by the younger generation of anthropologists and sociologists in our midst has gradually revealed the cause of the trouble. The inductive Baconian method of natural history description has surreptitiously smuggled in the sociologists' concepts, in terms of which any society is to be conceived. What is required, therefore, is to introduce a scientific method which enables one to describe a given society in terms of the concepts used by the people in that society with respect to their own social institutions and practices. Thus Professor Clyde Kluckhohn, for example, came to the conclusion that one simply cannot understand the institutions and practices of the Navaho Indians unless one stays with their practices long enough to discover the ideological assumptions or, as he terms it, the philosophy, from which their institutions and practices proceed.¹

This line of reasoning has, among other things, led to the complete explosion of Lévy-Bruhl's theory that the so-called primitive peoples think illogically. They only seem to think illogically for anthropologists and sociologists who look at social institutions from ideological assumptions other than those of the people in question. Once the ideology—the philosophy—of the so-called primitive people is determined, then their thinking exhibits itself as thoroughly logical.

Thus it is that more scientific attention upon and practice of scientific method with the attendant less naive conception of scientific description, together with the natural development of the historical and the sociological approach to law and cultural anthropology, has led directly to the ideological approach to economic, political, legal and international problems.

It is in this context that Edward Hallett Carr's book is to be viewed. It is concerned, among other things, with revealing some of the ideological assumptions behind the behavior of the Soviet Union, so that one senses them as a positive good, after the manner in which a believing communist conceives of them. Professor Carr is trying to do for the contemporary Soviet Russians precisely what the anthropologist Professor Clyde Kluckhohn has done in his past and forthcoming writings on the philosophy of the Navaho Indians.

This precise nature of what Professor Carr is doing must be kept in mind in evaluating his book. The enthusiasm and moral fervor with which he ends the volume suggests that he has not kept it in mind. The book proves nothing concerning the validity of the particular ideological premises from which the Soviet Russians proceed. It stands on all fours with Professor Kluckhohn's book upon the premises from which the institutions and practices of the Navaho Indians proceed. No one would suppose that when Professor Kluckhohn brings out into the open the ideological assumptions of the Navaho Indians in a manner which vividly fills one's imagination and enables one to sense how the Navahos could be moved by such an ideology and re-

1. RADIN, *PRIMITIVE MAN AS PHILOSOPHER* (1927). KLUCKHOHN AND LEIGHTON, *THE NAVAHO* (1944).

gard it as their criterion of the good, this proves anything with respect to the scientific validity of the Navahos' ideological assumptions. The question concerning which set of ideological premises is the scientifically correct one is a question with respect to which Professor Carr's book and the foregoing analysis of recent developments in legal, anthropological and sociological theory throws little light.

The main problem in contemporary legal, anthropological, historical and sociological methodology is that of finding the scientific method by means of which, after having brought the ideological assumptions of the major nations, cultures and political parties of the world out into the open, one determines which one, if any, is scientifically correct. There is evidence that the solution to this problem is at hand. Professor Carr's book, however, throws no light upon it. It must be read solely as a study in the logical analysis of Soviet institutions and practices, with the aim of bringing out and making psychologically persuasive the ideological premises—economic, political and moral—from which they proceed. The results of his analysis merit consideration in detail.

The author makes it abundantly clear that the Soviet Russians' use of the word "democracy" is far from being the dishonest use of the word for purely propagandist purposes which it is thought to be by most people who look at Soviet pronouncements and behavior from non-communistic ideological standpoints. First Professor Carr points out that Russian thought derives from the continental and French concept of democracy rather than from the British and Anglo-American concept, and that this makes a profound difference in what one means by the word. The British concept of democracy derives from Locke and Hooker. The traditional concept in the United States derives almost entirely from Locke. The French and continental concept, on the other hand, while deriving in part, by way of Voltaire, from Locke, rests heavily on Rousseau. This makes a tremendous difference. Rousseau regarded all traditional institutions as corruptions of a state of nature and hence, in considerable part, evil. This means that the good is always to be obtained by rejection of the *status quo*. Thus in one's democratic theory, to be a follower of Rousseau rather than merely of Locke is to tend to emphasize revolution as the essence of democracy. This undoubtedly is in part what Lenin meant when he said that the philosophy of Marx derives from the three major nineteenth-century achievements of the three major nations of the modern world, namely, German philosophy, British economic science and French revolutionary socialism.

But Rousseau's contribution to the concept of democracy differs from that of Locke in a second and even more profound way. For Locke, because of his conception of a person as a local, atomic, mental substance, the good for man is always predominantly private, egocentric and individualistic. Thus Lockean democracy, as exhibited in the institutions of Great Britain and the United States, distinguishes between government and man in society

and so formulates government that government becomes largely an instrument for protecting individuals and their private property even against itself. Rousseau, on the other hand, emphasizes the "general will." Thus in Rousseau's concept of democracy the aim of government is to insure the expression of the general will. From this, as Carr notes, it becomes bad and a betrayal of democracy for the individual to fail to accept the general will. Thus if one accepts the Rousseauian, continental, concept of democracy, individual deviation from the general will, as recorded in governmental action, tends to be regarded as an evil rather than a good. This throws considerable light upon the Germans' and the Russians' rough treatment of minority groups and non-conformist leaders at the same time Russian and German statesmen are affirming their defense and preservation of "democracy."

Professor Carr points out also that the Revolution of 1848 has had an important bearing upon the Continental European conception of democracy. The Russians regard this Revolution as a movement which shifted Continental, even French Continental, democratic thought from the Rousseauian to the Lockean conception of democracy. Hence, for the Russians it was a literal betrayal of democracy.

This is but one instance of the manner in which the ideological approach to the use of words like "democracy" or "freedom" in domestic politics or international relations prevents one from falling into the Lévy-Bruhl error of attributing inconsistency and verbal duplicity to political or national leaders when their deeds do not seem to conform to their pronouncements. The apparent inconsistency often has its basis in the fact that reading into the words of one's adversary the meanings those words have upon the basis of one's own ideological premises destroys the meanings which they have for one's adversary. When this is done, all his pronouncements and behavior will appear to be shot through with duplicity and with logical inconsistency. The ideological approach to legal, social and international problems which Professor Carr illustrates prevents such elementary errors.

One other specific achievement of his book merits attention. It may seem paradoxical that the Marxist philosophy, which rejects the Hegelian role of ideas in social institutions, should be understandable only by paying attention to the ideas upon which the philosophy rests. The paradox evaporates, however, when one notes that the Marxist theory that naturalistic economic and dialectically historical factors determine the character of social institutions at a given time is itself an idea. Economic need alone does not bring in a communistic revolution. Otherwise the communistic revolution would have occurred in China thousands of years ago, since economic need exhibiting itself in the death of millions from starvation annually has existed in China since the beginning of its recorded history. It is, as Professor Carr points out, not economic need but the concept of economic need to be removed by the revolution of the proletariat which is the key thesis of com-

munism. The need as fact and the concept of the need as a moving slogan in social reconstruction are two quite different things.

Professor Carr also explodes the notion that the communist leaders are guided by nothing but a hard-boiled power politics realism, after the manner of the prescription of the late Nicholas Spykman and the persisting advice of the Yale Institute of International Studies. The writings of all the leaders of communist action and thought show that they have nothing but utter contempt for such non-ideologically guided power politics realism. They know very well that there is no such thing as mere power politics. The power is wasted unless it has a direction. Power by itself is neutral with respect to the direction it takes. Hence, without an ideology power politics is stupid and also ineffective, since it is continually extemporizing the direction it takes, while pretending to have no interest in the ideas which define the direction. The result is a national policy which vacillates, reverses itself and generally results in ineptitude.

The crucial role of the ideological factor, even with realistically minded Russians, is brought out by Carr in another way. "A true revolution," he writes, "is never content merely to expose the abuses of the existing order, the cases in which its practice falls short of its precept, but attacks at their root the values on which the moral authority of the existing order is based."² He emphasizes that the communist recognizes this unequivocally. This has important consequences. It means that one will never meet the communist ideology or the point of this ideology by admitting that the traditional democratic doctrines, like all ideologies, have not fully achieved their ideal and by proposing that we make them more effective in realizing their aims. As Professor Carr points out, the criticism of one ideology by another ideology is a criticism of the aims of the other ideology, even if they were perfectly actualized. That this is the case is shown by the attitude of citizens of the United States with respect to the ideology of the Divine Right of Kings. The defenders of monarchy and aristocracy would not meet the objections of the traditional Anglo-American democrats to monarchy and aristocracy, even if the monarchists achieved their ideal perfectly. It is not the inefficiency of monarchs merely which is objected to, but a type of political organization in which an aristocratic few rather than the democratic many decide the type of social organization within which the democratic many must live. Once this point is grasped, the prevalent notion of American pragmatists and many social scientists such as the legal realist Walter Wheeler Cook, that one can resolve normative moral and social questions in terms of the pragmatic efficiency or effectiveness of different normative hypotheses, exhibits its futility. The whole criterion of efficiency and of the norm with respect to which efficiency is to be measured is the point at issue in any major ideological conflict between two political parties or between two nations.

All the foregoing considerations bring us to one weakness in Professor

2. P. 94.

Carr's book. This weakness appears in its final portion. The very nature of the method which Professor Carr is pursuing, the method of bringing out into the open the ideological assumptions from which the institutions and practices of Soviet Russia proceed, is a method which throws little or no light on the validity of those premises. This method, if applied to any culture or any ideology, will make that ideology imaginatively vivid and subjectively persuasive, if it is honestly and scientifically carried through. Yet it is difficult to escape the conclusion, when finishing Professor Carr's book, that he believes that he has shown not merely the intellectually honest and logically consistent assumptions from which Soviet practices and institutions stem but also that he has, in part at least, shown their validity. The very nature of the method he is using gives the lie to any such conclusion.

The reason for this erroneous suggestion upon Professor Carr's part is not difficult to find. He is caught still in the naive natural history descriptive approach of followers of the historical method in social science. Surreptitiously he slips in the assumption that the Hegelian dialectical and Feuerbachian materialistic, Marxist conceptual framework for working at and evaluating the facts of history is a fact of history apart from the conceptual standpoint. But Professor Carr is not alone in this naive error. The Hegelians and Marxists before him fell into it also.

The error centers at bottom in confusing the vague intuitive notion of historical trends (any one of which is an abstraction of certain facts from the sequence of all historical facts, to the neglect of all others) with the more precise scientific concept of causality. There is no evidence whatever from history or any of the social sciences that social scientists have achieved a causal theory of the temporal sequence of historical or social phenomena. Even for that branch of the social sciences which is the most quantitatively exact and theoretically mature, namely, economics, most competent students are agreed that they have merely an economic statics and not an economic dynamics. This is but another way of saying with scientific precision that causal relations between present and future historical or social phenomena have not been scientifically established. Yet it is only by confusing the vague intuitive, arbitrarily abstracted notion of an historical trend with the scientifically exact notion of causality that the Marxists, and Professor Carr following them, can suggest that if one wants to be on the historical band wagon which is moving into the supposedly inevitable future, one must be a communist.

This does not mean that the premises of the communistic ideology may not turn out in part at least to be correct when the scientific method for determining the correctness of one set of ideological premises rather than another is determined and applied. The point merely is that there is nothing in what Professor Carr has done or in what the Hegelians or Marxists before him have done which enables one to give a trustworthy answer to this crucial question.

Professor Carr's book, therefore, is important if it is taken solely for what it is, namely, an analysis and designation of some of the ideological assumptions from which contemporary Soviet pronouncements, institutions and actions consistently stem. The other major ideologies of the contemporary world, Oriental as well as Western, need to be similarly treated. When this is done, the basic problem or problems to which these rival sets of premises are rival answers should then become evident. An analysis of these basic problems should guide one scientifically to the criterion for their solution.³ Only when these additional supplements to Professor Carr's important but restricted inquiry are provided will one be in any position to pass an objective judgment upon the validity of the Soviet or any other social ideology.

It would be a mistake to leave the impression that Professor Carr's book is concerned only with ideological factors. Only one chapter in the book bears this title. A reading of the other chapters will indicate, however, that ideological factors are present there also. Nonetheless, the administrative side of social organization receives considerable treatment. Professor Carr makes it clear that the administrative programs which are in considerable part at least a consequence of the Soviet policy or ideology have had a tremendous effect upon nations which have not accepted the ideology. Thus his book is important for its practical as well as its theoretical significance.

F. S. C. NORTHROP†

DANGEROUS WORDS. By Philip Wittenberg. New York: Columbia University Press, 1947. Pp. 335. \$5.00.

THE words the author of this book discusses are not those which threaten revolution or which otherwise affect the security of the state, but defamatory words concerning individuals and groups. Since the book is intended not for lawyers but for writers, editors and publishers, it is quite properly described as a guide rather than a treatise.

To a considerable extent purpose has here determined form and content. The author gives us no general discussion of the law of libel or the various elements which compose it, but on the other hand he gives us an interesting and extensive assemblage of instances. In an appendix he has chronologically listed, under various classifications, the great variety of expressions which the courts have at one time or another considered libelous. This list opens with an 1812 New York holding regarding an accusation of false swearing and comes down to a 1947 Illinois decision about Communists. In between lies

3. Such an analysis has been carried through in the present reviewer's *THE MEETING OF EAST AND WEST* (1946). The attendant scientific method for determining the correct social ideology is specified in detail in his *THE LOGIC OF THE SCIENCES AND THE HUMANITIES* (1947).

† Sterling Professor of Philosophy and Law, Yale School of Law.

a fair sampling of expressions which touch upon the seamier side of American life, political, religious and professional.

Wittenberg concerns himself particularly with the difficulties confronting today's purveyors of information who have to rely on material supplied by others. He is concerned especially with the syndicated newspaper and the radio and points out the curiously divergent rulings which can occur when the same material becomes the basis for litigation commenced in different states.¹ Wittenberg also comments on the difficulty the courts of various states have had in determining whether radio broadcasts should be governed by the law of libel or of slander. Unfortunately he does not make clear wherein lies the importance of this difference.

To meet the difficulties regarding diffusion over large areas, the author suggests that Congress exercise its power over interstate commerce to prescribe rules of liability. He believes it should also lay down a uniform rule regarding the privilege to discuss the acts of public officials. Aside from indicating, however, that there should be protection "for the unwitting newspaper or radio station which receives its material from afar", he offers no particular rule for Congress to adopt and it is doubtful whether a federal rule would really accomplish the greater uniformity which he indicates is desirable. Might it not merely be adding a 49th rule, when in most cases an astute person could find some wholly intrastate use of the objectionable material involved?

The book deals at some length with the always live subject of political criticism, but without adequate distinction between "privilege" and "fair comment" or their role as defenses. Criticism of works of art comes under the heading "Professional Persons" and therefore finds itself side by side with the discussion of the special rules which govern libels of a man in his business or profession.² The two things seem to this reviewer to be unrelated.

There is a discussion of group libel and minority groups, in the course of which Wittenberg takes cognizance of some of the current proposals to punish libels of groups in respect of their race or religion. One would like to have seen a more extensive discussion of the arguments for and against these proposals, and also of the constitutional issues involved.

The book at various places includes extensive quotations from or paraphrases of state statutes, the usefulness of which seems doubtful. It is hardly to be expected that the ordinary layman will grasp the significance of the words used, and no lawyer will be satisfied by a reference to statutes made in so informal a fashion. These portions of the book might perhaps better have been relegated to an appendix containing precise documentation.

1. Pp. 145-55. In the first discussion Mr. Wittenberg falls into error in stating that the United States Supreme Court denied certiorari in one of these cases, since in fact certiorari was granted and the decision below affirmed by an evenly divided court.

2. Actually the author in discussing each of these separately makes it appear that particular groups are "favored" by the law, whereas the law merely protects persons who are libeled in their professions or businesses.

The author has adopted the useful device of referring in the text to the names of the important cases he discusses without burdening the book with footnotes, leaving it to the more interested reader to find the citation of the case in an appended table. It might have been helpful to have added dates to this table. Indeed, with reference to the very first case cited, the omission of the date makes finding the case impossible.

The book lacks a sufficient discussion of seditious libel and of criminal libel, although some of the differences between civil and criminal liability are indicated, as in the chapters on libel of the dead and on truth as a defense. It has also no real discussion of the subject of special damages, which one would suppose of interest to laymen as well as lawyers. And it ignores altogether the cognate field of the right of privacy and the statutes which protect it.

There are places in which better editing would have avoided ambiguities and repetition³ and others where technical terms of the law, such as libel per se, are introduced without adequate explanation for the lay reader.

OSMOND K. FRAENKEL†

THEY BUILT BETTER THAN THEY KNEW. By Julius Henry Cohen. New York: Julian Messner Inc., 1947. Pp. 376. \$3.75.

THIS is really Julius Henry Cohen's autobiography because, while he introduces a long and varied list of public-minded and distinguished figures, particularly in the public life of New York City, he treats them in chronological sequence from his own early days up to the present time. His use of these men and women as pegs upon which to hang his life story makes for a somewhat rambling and discursive book which could have been condensed if it had been a straight autobiography.

The author groups his heroes in the main divisions: (1) *Bending the Twig*; (2) *Orchids Grow in Swampy Grounds* (Theodore Roosevelt, William M. Ivins, Alfred E. Smith); (3) *The Women Take Over*; (4) *The Law Moves Forward*; (5) *Trial and Error in Industry* (Max Meyer, Louis D. Brandeis, Morris Hillquit, Meyer London, John A. Dyche, Dr. George M. Price, Belle Lindner Moscovitz); (6) *New Times—New Instrumentalism*. The fifth and sixth divisions are the most important because they cover the introduction of collective bargaining into the women's wear industry and the establishment of the Port of New York Authority as an early example of a successful public corporation. As the reader may have guessed, the "swampy grounds" of the second division are the environs of Tammany Hall. In some of the subdivisions of the book its author abandons the personality peg; the St.

3. See pp. 18 and 20, 45 and 46, 54 and 55, 271 and 273.

† Member of the New York Bar.

Lawrence Power Authority, the Conference on State Defense and Rent Cases can not be conveniently treated as the work of individual personalities.

Perhaps this book is the preliminary draft for a more extensive autobiography since Mr. Cohen is a victim of *lubido scribendi* and has already written four books and a large number of papers. However, men and women here remembered greatly influenced our thought and pioneered courageously in many fields during the last 50 years in New York City. There are many serious reflections arising from Cohen's legal practice, stories grave and gay and many apt quotations. While not all the thumbnail sketches come off, many of them rescue worthy men and women from undeserved obscurity.

Sometimes, in the judgment of this reviewer, Cohen is too cryptic. For example, he endeavors to picture two outstanding leaders of needle trades unions in one sentence: "The difference between Hillman and Dubinsky is just this: Dubinsky is *astute*, while Hillman is *shrewd*."¹ In most dictionaries the two *underlined* words are synonymous, but people who have met and worked with both men maintain that neither of them was lacking in the cunning and finesse which are necessary in dealing with some of the manufacturers of the garment industry.

In the first adoption of collective bargaining practices in the small-scale, competition-ridden garment industry which created (under the leadership of Louis Brandeis) the ambitious union agreement known as the Protocol, Cohen played a leading part on the side of the employers. Some commentators think that his account exaggerates the importance of his own role. However, there is something to be said for his view that both he and John A. Dyche were expendable. The manufacturers thought that Cohen went too far in his efforts to cooperate with the Union, and the ILGWU members and the leaders who were Dyche's rivals thought that he, in turn, was too rigid in his effort to enforce compliance with the agreement. (Dyche took the agreement so seriously that, without attempts at persuasion, he sent in union members to break the strikes and stoppages which the members had called in defiance of the settlement procedures laid down in the agreement.) It took some years before all the manufacturers were prepared to accept the Union as a permanent institution without which they could not operate the industry. And it also took time for the Union to gain strength and permanence and to exchange the psychology of conflict for one of possible cooperation. It is only natural for Cohen to feel the "spurns that patient merit from the unworthy takes" when he looks back and feels that others reaped where he had sowed because he and Dyche were ahead of their time. Cohen apparently had little sympathy or understanding of the mass agitational movement of the exploited workers and he felt that the use of the injunction in 1910, obtained by him for the employers to stop peaceful picketing, was justified. The full evaluation of that period and its personalities is probably still to be made.

1. P. 188.

The author's suggestion that references to Dyche have not been permitted officially by the Union seems to me unjustified. He himself notes that in Benjamin Stolberg's sophisticated and cynical *Tailor's Progress* some recognition is made. Certainly Joel Seidman, from whose *The Needle Trades* Cohen makes many quotations, was under no official pressures. Dyche wrote his own version of his defeat which he took very bitterly. In his later days he received some help and assistance from the union, although perhaps Cohen is right when he suggests that more credit is due.

As a stickler for details, Cohen will correct the reference to 840,000 workers in women's wear in 1910,² which is nearly double even the present total. Harold U. (not V.) Faulkner is not the joint author of "Workers Education in the United States" but of "Labor in America."³ His laudatory reference to Frederick H. Ecker in housing does not mention, as does *To Secure These Rights*, the recent Report of the President's Commission on Civil Rights, the segregation practised by Mr. Ecker as head of Metropolitan Life.

Mr. Cohen served as consultant and legal aid to many good causes—housing, arbitration, collective bargaining, public corporations—most of which have won recognition. His natural preoccupation with yesteryear gives some valuable insights on the early days of men and women who certainly builded better than they knew.

MARK STARR†

A CONCISE HISTORY OF THE LAW OF NATIONS. By Arthur Nussbaum. New York: The MacMillan Company, 1947. Pp. 361. \$4.50.

PROF. NUSSBAUM's book covers the entire history of the theory and practice of international law from 3,100 B.C.—the date of a compact between two Mesopotamian cities which may be classified as the first known international treaty—to the Second World War.

In the first chapter the author briefly outlines certain institutes of the ancient Orient and of the classic world, such as the Greek *proxenoi* and Roman *fetiales*, which were somewhat related to international law or rather international relations. In the following chapter which covers "The Middle Ages" from the fall of Rome until the end of the Fifteenth Century, the author, having remarked that "notwithstanding the enduring authority of the Corpus Juris Civilis, still considered imperial law, ecclesiastical law was the dominant type of universal law in the Middle Ages,"¹ examines the influence of religious concepts on the law of treaties, arbitration and warfare.

2. P. 224.

3. P. 355.

† Educational Director, International Ladies Garment Workers' Union.

1. Pp. 23-4.

He devotes special attention to the intercourse of the Italian city states, to commercial treaties and, in the field of legal theory, to the doctrines of the "just war" and projects for perpetual peace. The author points out in his next chapter that the Sixteenth Century was characterized in the field of the law of nations by certain legal aspects of geographical discoveries and by the rise of independent states which denied the superior authority of the Holy Roman Emperor. But the author is chiefly interested in the work of various writers: Vitoria and Suarez, who analysed problems relating to the fundamentals of international law, D'Ayala and Belli, who expounded the laws of warfare, and, finally, Gentili, who wrote treatises on subjects, like embassies and the law of war, within the scope of international law. In the chapter on the "Seventeenth Century" the author emphasizes the further development of national states and the weakening of the Holy Roman Empire and the Catholic Church as political powers. While some attention is given to the practice of international law, especially in the field of diplomatic law and commercial treaties, the chapter deals mainly with the works of various scholars: Grotius, to whom the better part of the chapter is devoted, Hobbes and Pufendorf, who questioned the existence of *jus gentium*, and the Englishman Zouche and the German Rachel, who were the first to undertake a systematic treatment of the whole field of international law. The author pointing out in his chapter on the "Eighteenth Century" that "On the whole, the changes in international law were moderate,"² proceeds to analyse the works of Bynkershoek, Wolff, Moser, Georg Friedrich von Martens and Vattel, charging Vattel with "general weakness of reasoning aggravated by lack of legal training."³

A real advance in the law of nations took place, according to Prof. Nussbaum, during the Nineteenth Century. After a brief examination of certain theories, such as the principles of the Holy Alliance and the Monroe Doctrine, which he holds to be of a political rather than a legal nature, the author emphasizes certain changes which took place in the rules relating to consuls, the development of various types of treaties of commerce, and especially the substantial increase in the amount of written international law through the conclusion of a great number of treaties on various subject matters. He also points out that in the field of legal studies, the Nineteenth Century is characterized by a trend toward the positivist method of research and by the publication of a great number of treatises on international law.

The last chapter is devoted to "The Twentieth Century: 1900-1939." The author is especially interested in the legal features of the peace treaties concluding the First World War, in various multilateral treaties creating international agencies, and in the development of certain judicial bodies such as the Permanent Court of International Justice. The author also briefly outlines the theories of Triepel, Krabbe, Duguit and Kelsen, who

2. P. 131.

3. P. 159.

reconsidered the fundamentals of international law. There is also a cursory analysis of the Nazi and Russian theories on international law.

Prof. Nussbaum's task was not an easy one. While the history of certain aspects and institutes of the law of nations, such as neutrality and consuls, has been the object of accurate and successful research, general histories of the law of nations are very few and many of them are of limited value. In fact, some of them are obsolete and many are nothing more than an attempt to justify certain political ideologies of their authors. No basic pattern of research has been established as yet which may be of real assistance to one who engages in the study of the history of the law of nations.

The author has achieved a real *tour de force* by condensing the whole subject matter in less than 300 pages. More than 60 pages consist of a sketchy "Survey of the Historiography of International Law," of some useful bibliographical notes and of the index. The book is always entertaining and very often provocative, benefitting greatly from the fact that the author's knowledge is by no means limited to international law. It constitutes prescribed reading for anybody who is interested in the history of the law of nations.

The author's treatment of the subject matter raises certain problems of method which deserve special attention. The book shows some imbalance between the treatment of the theory and the practice of international law. By definition, a history of the law of nations should be chiefly concerned with international institutes, and, therefore, with the practice of international law. However, a major portion of the work is devoted to what the author calls "Doctrinary and Literary Developments" and to an analysis of the writings of a few authors. The result is that the reader gathers the impression that the practice of international law hardly came into existence until the Congress of Vienna in the Nineteenth Century. Such a conclusion would be obviously incorrect, for it can easily be demonstrated that many practices, which are within the scope of international law as it is now understood, were followed in certain parts of Europe and in the entire Mediterranean area during the Middle Ages and that the formative period of modern international law is to be found in the Seventeenth and Eighteenth Centuries.⁴

The method followed by the author in his account of the doctrines of international law is also questionable. In fact, he is almost exclusively concerned with the analysis and criticism of the work of the few select writers mentioned above. Unfortunately, many of them belong to the archeology rather than to the history of international law. Prof. Nussbaum, who professes but little esteem for a great number of those writers, readily admits that many of them are recent discoveries. Their relationship to international law is by no means comparable to that of Coke or Blackstone to English law. In truth most of them had little influence, if any, on the actual develop-

4. See Sereni, *THE ITALIAN CONCEPTION OF INTERNATIONAL LAW* 118-24, 147-8 (1943).

ment of international law. Continental practitioners who dealt at the time of Rachel, Christian Wolff and Moser with problems which would now be considered within the scope of international law, did not quote as authorities the writings of those authors, but rather invoked the *Corpus Juris Civilis*, Bartolus, Baldus, Alciatus and the French Civilians. Furthermore, apart from any criticism as to the choice of the authors who deserve special attention in a book of this kind, it must be pointed out that a history of the doctrines of international law should be concerned with general principles rather than with details. While not disregarding the particular contribution of a few outstanding scholars to the development of the law of nations, such a history should devote more attention to the much greater influence exercised over international law by certain basic doctrines which molded the legal and political thought of the various ages. The doctrine of the post-glossators on the powers of the Holy Roman Emperor while exalting his spiritual dominion over the whole world actually denied his political authority over the various peoples, and laid a legal foundation for the evolution of the Holy Roman Empire into the international community. The Italian theory of the *civitates superiores non recognoscentes* led to the theory of the independency of States. And the doctrine that "*Rex in regno suo est imperator in regno suo*," first expounded by the Italians and later developed by the French Civilians, was one of the foundations of the theory of the equality of states. Attention should also be given to the Spanish theories on the relationship between the metropolitan territory and the American possessions. Up to the Nineteenth Century, however, these legal theories, which played a pre-eminent role in the development of the law of nations, were not expounded by professional international lawyers. They are to be found instead in the writings of the great private and constitutional lawyers. Bartolus and Bodin have a much better claim to a conspicuous place in a general history of international law than a Rachel or a Christian Wolff.

The practice of international law should also be treated in a manner consonant with the peculiar features of the law of nations and of its development. Changes in the structure of the international community have been so many and so radical throughout the centuries that there is not even substantial agreement as to the time when such community and the laws governing it came into existence. Yet there is a continuity in the development of the international organization and of the international community. The main task of the historian should consist therefore in showing the slow but continuing development of the law of nations. As a convenient and practical basis for the treatment of the subject matter, an historian should bear in mind the peculiar structure, problems and trends of the international community and of international law as they now exist. His task should be to examine the development of such trends and problems throughout the ages. However, he should not overlook the different problems and trends which existed in the international community at different times, the reasons for them and their influence on the structure of the international community

and the development of the law of nations. Reasonable adherence to this method will enable a writer to show the main trends and problems of international law in their proper light, thus also clarifying their current implications. This approach would be also a stimulating one, for the measure of an historian's genius is shown by his ability to describe the brilliant pageant of international law through a cycle of comprehensive frescoes, rich in color and deep in perspective, rather than through a dull succession of disjointed still-lives.

It should be pointed out that the basic principles and trends of international law are very few and can easily be traced through the centuries. Some of the more important are: the rise and expansion of the international community, the organization of agencies and bodies tending to strengthen its structure, the trend of the various members of that community toward mutual independence and equality, and the legal justification of the binding force of treaties.

According to the method outlined above, the artificial subdivision of the subject matter by centuries should be discarded in favor of an analysis by broad periods and topics. Thus, in the chapter or chapters devoted to the development of the international organization, the historian should examine those features of the Holy Roman Empire which may be classified as international or supra-national, the Empire's trend toward universality and the final failure of its effort in that direction as a result of the growth and opposition of the various independent nations. He should also examine the gradual weakening of the international community through excessive claims to independence of the various states and, as a reaction to that evil, the subsequent attempts to strengthen the international community through an ever-increasing number of special bilateral and multi-lateral agreements and through the organization of various international agencies and bodies, including the League of Nations and, now, the United Nations. In dealing with the development of independent states, an historian should describe the early struggle of various powers against the Emperor, the rise of the great monarchies and independent republics—especially remarkable since the Fifteenth Century—and, finally, the peculiar features of the modern states which are of interest to international law. It should be shown that modern states, while jealously asserting their own independence in their mutual relations, often achieved territorial expansion, especially in other continents, through the establishment of special relationships based on their superiority over certain subordinated entities, *i.e.* colonies, protectorates, mandates, semi-sovereign states and puppet-states. And here again the trend of many of these subordinated entities toward a status as independent international subjects should be shown.

According to the method outlined above, the historian should not disregard those problems of each historical period which are of paramount interest to the contemporary reader. An analysis of the legal relations of the Roman Era should devote but little attention to such topics as *fetiales*,

which belong to municipal custom and ceremony rather than to the origin of the law of nations. Attention should be given instead to the fascinating history of the legal relationship between Rome and the various possessions, colonies, semi-independent powers, federated and allied countries which were later to be merged into the Roman Empire. If there was an international community during this classic era, then the Roman Empire was the international community, since it actually embraced the better part of the civilized world under one law. Furthermore, the study of the relationship between Rome and other political bodies may constitute one of the historical premises for the understanding of the evolution of many parts of the British Empire into independent international subjects, a topic which looms large in the history of the law of nations and to which Professor Nussbaum devotes only eight lines.⁵

The treatment of the main aspects of the history of international law outlined above would also enable the reader to grasp the full implications of certain matters of detail. Punctilio in questions of diplomatic precedence during the Seventeenth and Eighteenth Centuries and the fight over the veto power in the United Nations are both aspects of the trend toward and the reaction against legal equality of states.

Of course, it will be the task of an intelligent historian to show the interplay of various trends and their historical backgrounds. However, he will have to refrain from any rash generalization. For instance, it is high time to revise the current opinion that the Peace of Westphalia, in 1648, definitely established the full and exclusive right of the various independent European states over their territories. In most cases, their power was neither absolute nor exclusive nor equal over all parts of their territory. On the contrary, it was limited and diversified in many ways by co-existing powers over various parts of their lands. These various legal relationships were governed by what we may now call international law and also by the public law of various legal systems and by general feudal principles affecting descent and distribution of the estates of the sovereigns. As late as 1747 Abbe De Mably used the comprehensive expression "*Droit Publique de l'Europe*" to embrace this intricate and confusing web of legal relations. It is doubtful whether the "Public Law of Europe" of that time should be identified with international law.⁶

Prof. Nussbaum has written a valuable volume and these remarks should not be construed in criticism. They are intended rather to stimulate the publication of a complete history of international law which would be one of the more useful achievements of contemporary scholarship in that field.

ANGELO PIERO SERENI†

5. P. 270.

6. See p. 140.

† Member of the New York Bar. Professor of Law, University of Ferrara, Italy, Lecturer, School of Law, New York University.